Supreme Court, U.S.
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No. 86-1823

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JUDY WADDELL,

Appellant,

v.

THE PEOPLE OF THE STATE OF MICHIGAN,

Appellee.

On Appeal From The Circuit Court For The County Of Berrien, State Of Michigan

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BRIEF IN OPPOSITION TO MOTION TO DISMISS

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BRIEF IN OPPOSITION TO MOTION TO DISMISS

INTRODUCTION

Appellant feels that a brief response to the appellee's motion to dismiss is required. This response is filed in order to ensure that the Court has a proper understanding of the facts, procedural history, and issues of this case in order to make an informed decision as to the substantial nature of the federal question presented.

Since this case comes before the Court on appeal and not on a petition for a writ for certiorari, by seeking

dismissal of the appeal for want of a substantial federal question, the appellee is by necessity seeking affirmance of the decision below. Such an affirmance on appeal is a decision on the merits of the case by this Court. *Hicks* v. *Miranda*, 422 U.S. 322, 343-45 (1975). The decision that the appellee seeks to have the court affirm is inconsistent with this Court's decisions and would perpetuate confusion on important constitutional doctrine that should be clarified by this Court.

ARGUMENT

I. THE APPELLEE'S MOTION TO DISMISS PUTS IN FOCUS THE VERY REASON THAT THIS COURT SHOULD GRANT REVIEW.

The appellee argued that the Court set down the standards to be applied in this case in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), that the Michigan court decided the case based on these standards, and, therefore, no further review of this case is necessary. It is precisely because the Michigan courts were able to reach the results they did while purportedly following *Yoder* that review of this case is necessary.

The Michigan courts' misinterpretation of *Yoder* does violence to the notion of equal justice under the law because it inevitably leads to a ranking of religious beliefs. The perpetuation of the "centrality doctrine" by affirmance of the decision below would mire courts in doctrinal issues beyond their competence. *Thomas* v. *Review Board*, 450 U.S. 707, 716 (1981). As pointed out in appellant's jurisdictional statement, the same misperception is so widespread as to cause great concern for the vitality of the principles enunciated in *Yoder*.

Affirmance of the decision below would also perpetuate the competing misconceptions that either *Yoder* substan-

tially changed the standards set out in *Sherbert* v. *Verner*, 374 U.S. 398 (1963), or that the two cases established separate standards for different types of cases. The state below, relying on *Davis* v. *Page*, 385 F.Supp. 395 (D. N.H. 1974), and *Badoni* v. *Higginson*, 455 F.Supp. 641 (D. Utah 1977), argued, as those two cases held, that *Yoder* modified *Sherbert*. The courts below seem to believe that the two cases established different standards for different types of cases—*Sherbert*'s more exacting standards applying to cases involving the denial of economic benefits and *Yoder*'s perceived lesser standard applying to cases involving generally applicable statutes. At least one member of this Court seems to hold a view that a different standard should apply in cases involving economic benefits. *See*, *United States* v. *Lee*, 455 U.S. 252, 261-263 (1982) (Stevens, J., concurring), and *Hobbie* v. *Unemployment Appeals Commission*, ___ U.S. ___, 107 S.Ct. 1046, 1053 (1987) (Stevens, J., concurring).

In *Sherbert* v. *Verner*, 374 U.S. 398 (1963), the Court set out principles to be followed in denying unemployment compensation to a person unemployed as a result of following his or her religious beliefs. More than a decade later, while purporting to follow *Sherbert*, the Indiana Supreme Court upheld the denial of unemployment benefits to a man unemployed as a result of following his religious convictions. It was able to reach this result by emphasizing minor factual differences that it felt rendered the principles of *Sherbert* inapplicable. *Thomas* v. *Review Board*, 391 N.E.2d 1127, 1132 (Ind. 1979). This Court granted certiorari and reversed, reaffirming the standards of *Sherbert*. *Thomas* v. *Review Board*, 450 U.S. 707 (1981). Despite these two cases, Florida, in a similar situation, denied unemployment benefits in the face of a First amendment free exercise claim. On appeal, this Court noted jurisdiction and reversed. *Hobbie* v. *Unem-*

ployment Appeals Commission, ___ U.S. ___, 107 S.Ct. 1046 (1987).

Yoder is the only free exercise case in which this Court has considered the application of compulsory school attendance laws. Despite the lofty principles enunciated in that case, states have frequently limited the holding to the unique facts of the case thereby sapping the life from those principles. With the increasing pace of confrontations between the states' interest in compulsory education and parental concerns as to the nature and manner of that education, this Court should clearly affirm the principles to be applied in this area. As in the line of cases from *Sherbert* to *Hobbie*, this Court is sometimes required to revisit certain areas of the law in order that fundamental principles are firmly established.

II. THE APPELLANT AT ALL TIMES SOUGHT TO COOPERATE WITH STATE EDUCATIONAL AUTHORITIES.

The appellee, on page three of its motion, states that there was testimony to the effect that the appellant "made no request for any special accommodation nor was one considered." While appellant does not dispute the latter part of this statement, the first part is not true. It would be a disservice to portray the appellant as disrespectful of the law or as arrogantly disregarding it.

The questions presented by this case are not similar to the issues presented in *North Dakota* v. *Rivinius*, 328 N.W.2d 220 (N.D. 1982), *cert. denied*, 460 U.S. 1070 (1983); *Nebraska* v. *Faith Baptist Church*, 301 N.W.2d 571 (Neb.), *app. dis.*, 454 U.S. 803 (1981); and *Kentucky State Board of Education* v. *Rudasill*, 589 S.W.2d 877 (Ky.), *cert. denied*, 446 U.S. 938 (1980), in which the challenge was to the authority of the state to regulate in any manner the standards of education in religiously-

affiliated schools. The appellant does not dispute the interest of the state in setting standards for education. She merely seeks a limited exemption from an inflexible statute.

Appellant was using a manual prepared by the Department of Education of the General Conference of Seventh-day Adventists (Exhibit A) to conduct a nonstructured program of education in her home for her son. This program included the pledge of allegiance to the flag and to the Bible, prayer, memorizing verses from the scriptures, show and tell, music, outdoor play and nature study, building things, going to the store, drawing pictures, taking cookies or apples to shut-ins, craft time, story time, and indoor play with toys and games (I Tr 1-158). This nonstructured program was followed four days a week. The appellant was licensed by the Michigan Department of Social Services for child care (I Tr 136-137).

When contacted by school authorities, appellant explained her program and religious beliefs in detail and asked if there were any possible way she could comply with the law by using the home study program for a limited time. The authorities refused to consider any accommodation (I Tr 154-157).

III. THE PROCEDURAL DELAYS IN THE LOWER COURTS, WHICH WERE NOT THE FAULT OF THE APPELLANT, SHOULD NOT BE USED TO DENY HER VINDICATION OF HER RIGHTS.

The appellant would like to briefly address the issue of the delays that have plagued this case in the lower courts. Appellant feels that the appellee has implied in its motion that the appellant sat on her rights or was in some way responsible for the delays. This is not the case, as the record indicates. The first delay in this case came when the State received a four-month delay of the trial in order

to find expert witnesses.[1] Following the one-day trial, the hearing on the defendant's motion to dismiss covered 17 hearing dates spread over 13 months. That the hearing covered such a lengthy period of time was the result of the trial judge's assignment of hearing dates. Because the hearing was spread over such a long period, it was felt that transcripts would be needed in order to properly brief the case, and a delay in briefing was ordered until the transcripts were ready. The court reporter did not have the final transcripts completed until nine months after the final hearing date.

After briefing, the trial court delayed for four years in ruling and then another six months before sentencing. During the period the trial court had the case under advisement, counsel for the defendant was in regular contact with the court clerk seeking information as to a decision. Because the defendant's fate in a criminal matter was in the hands of the judge, she was understandably reluctant to seek a superintending order from a higher court that might antagonize the already testy judge.[2] The appellant would note that the State, under a constitutional duty to provide a speedy trial, did not seek a superintending order.

On the same day as her sentencing, the defendant filed her notice of appeal. All of her appeals, including the present appeal to this Court, have been pursued with diligence. The appellee seems to feel that the importance

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[1]A copy of the trial court's order granting this continuance is included in the addendum to this brief.

[2]The attitude of the trial court judge, which was criticized in the Circuit court opinion, was perhaps best displayed at the sentencing hearing, a copy of the transcript of which is attached as an addendum to this brief.

of appellant's rights diminished with the passage of time. However, the State felt no qualms about convicting the appellant nine years after her actions. Three more years is not too late to right this injustice.

CONCLUSION

For the above reasons and the reasons contained in appellant's jurisdictional statement, this Court should deny the motion to dismiss and note probable jurisdiction of this case.

Dated:

Respectfully submitted,

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APPENDIX

APPENDIX

ORDER

At A Session Of Said Court held In The Berrien County Courthouse This 2nd Day Of June, 1975.

THIS Stipulation by and between John A. Smietanka, Prosecuting Attorney, and Lee Boothby, Attorney for the Defendant, having been read and filed and this Court being fully advised in the premises;

IT IS HEREBY Ordered that the above entitled matter is hereby adjourned to September 30, 1975, at 9:00 a.m. for the reason that the Prosecuting Attorney is unprepared to try this case because of being unable to locate expert witnesses whose testimony is expected to be crucial to this case. Both counsel are to file with the Court and with opposing counsel briefs on all issues of law within 30 days and may have 14 additional days to reply to opposing briefs. Both counsel will furnish to the Court, and shall furnish to opposing counsel, names and addresses of all expert witnesses who may be called to testify within 30 days of this date. Thereafter, acts of God excepted, no further adjournments will be granted for inability to obtain testimony of any expert witnesses.

The Court notes that the acts constituting the offense allegedly occurred between September 8, 1974, and January 14, 1975, the date upon which the warrant was issued. The Defendant was arraigned January 16, 1975. Over two months later, on March 26, 1975, a pre-trial conference was held and at that time Defendant's counsel filed a motion. The Prosecutor filed an answer to this motion on May 9, 1975, and neither attorney has yet briefed the motion. (Said motion will be considered and ruled upon at the time of the trial, and not before.) On April 1, 1975, this case was set for trial on June 3. On May 30 a Stipulation to Adjourn was filed with the Court. For the foregoing reasons and to encourage due diligence in the preparation and trial of this case, the adjournment until September

30, 1975, is a final adjournment and no further adjournments will be granted (acts of God excepted, of course).

John T. Hammond
Presiding District Judge

DATED: June 2, 1975

STATE OF MICHIGAN
IN THE FIFTH DISTRICT COURT
FOR THE COUNTY OF BERRIEN

Case No.
5A00697

THE PEOPLE OF THE STATE OF MICHIGAN

v.

JUDITH RUTH WADDELL,

Defendant.

SENTENCING

BEFORE THE HONORABLE JOHN T. HAMMOND, JUDGE

St. Joseph, Michigan—Tuesday, March 20, 1984

APPEARANCES:

Mr. Robert A. Yingst
On behalf of the Defendant

Joan M. Dalton, CER 3020
Official Court Recorder

St. Joseph, Michigan

Tuesday, March 20, 1984—at about 3:36 P.M.

(Court, counsel and all parties present)

THE COURT: This is case 5A00697, The People of the State of Michigan versus Judy Ruth Waddell, now here for sentencing. Counsellor, anything additional to offer other than the fact that other than the really major error that you've already pointed out in the pre-sentence, the really major significant error?

MR. YINGST: Not really, Your Honor. I believe you're very familiar with the background of this case and—

THE COURT: There are times when I wake up in the middle of the night screaming. Yes, I've tried to forget, but it's sort of like bad sauerkraut; it just keeps coming back, and back, and back. Why me? I've asked a few times. Why was my number drawn? I didn't volunteer, but it's like carrying out the garbage, I guess. Somebody's got to do it.

Okay. The major error of the pre-sentence report was that it was reported that the Defendant was older than she truly is.

MR. YINGST: By one full year, Your Honor.

THE COURT: If you're going to make a mistake, you're always supposed to make it on the light side.

MR. YINGST: That's what I understood.

THE COURT: Anything additional from either you or your client?

MR. YINGST: No, Your Honor.

THE COURT: As I indicated in chambers, and as foreshadowed in the Opinion of September 1st, which was, in fact, delivered in-hand to the Prosecutor's Office September 1st—they put plenty of notice—I asked them for information, recommendations and briefing on matters of costs. And as you're already aware, they've furnished me with nothing, which does at last one thing; it insures that whatever I do, there's at least one office that can't complaint [sic] about it. You have to look, sometimes, at the real practical importance of the matter.

I said in the Opinion that I wasn't going to impose a mandatory jail sentence—I kind of changed my mind on that. In adding up the costs, I guess, I had a brand-new yellow pad that I thought I would just tear off the top sheet and save the rest of the pad, except that I find that my notes of the testimony of the witness fills the entire yellow pad, likewise, the next one. That's why I'll be happy to be over with this case.

Mrs. Waddell, anything additional you wish to say?

MRS. WADDELL: No.

THE COURT: Congratulations on having furthered your education in the meantime. Sentence in this case is as follows: No mandatory jail sentence, I'll assess the fine of $50, State costs are $5—they are required in every case. In addition, I'll assess the costs at $1,000, and, so that I can avoid having my picture on the front page of any nationally distributed magazines—like a certain poignant picture that showed this lady clutching the bars of the cell with a tear trickling down her cheek as you looked in the background and saw rusted, chipped, old-type jail commode sitting in the corner—the tears trickling down the cheek. I distinctly remember that article. So to avoid getting myself treatment that is as little sympthetic as that one was sympathetic, I'm not going to impose any alternate jail sentence, leaving the Prosecutor free to utilize his available remedies as provided by law—apparently, just you and I, now, are somewhat limited, but after all, I don't get to write the law, I just get to read it.

And with that, since there is no mandatory jail sentence, and there is no alternate jail sentence, the Defendant is free to leave. As I indicated before, costs are substantial. Those costs are, I suspect, no where near approaching the real costs. The real costs are absolutely, as well as theoretically, incalculable. They're enormous. My docket has never, ever recovered from it, and the time this case has consumed, I probably could have disposed of a thousand other cases, which probably meant that a significant number of those cases, people had to stay in jail that otherwise, could have been gotten out of jail, or that were out of jail committing new crimes before they could be sentended for their old crimes, but that's the way it is, I guess. Those figures—those costs can't be calculated in any event.

So, that's the sentence. Hail and farewell.

MR. YINGST: All right. Thank you, Your Honor.

(At about 3:46 P.M. proceedings concluded)